

CITIES AND TOWNS - Duration of payments to police officers injured in the line of duty;

EMPLOYEES, PUBLIC - Duration of payments to police officers injured in the line of duty;

MUNICIPAL GOVERNMENT - Duration of payments to police officers injured in the line of duty;

POLICE - Duration of payments to police officers injured in the line of duty;

WORKERS' COMPENSATION - Duration of payments to police officers injured in the line of duty;

MONTANA CODE ANNOTATED - Sections 7-32-4132, -4136, 19-9-207, 39-71-105(4), -701(3), -705(2);

MONT. REV. CODE ANN. (1977) - Section 92-838;

CALIFORNIA LABOR CODE – Sections 3202, 4850;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 114 (1988), 42 Op. Att'y Gen. No. 69 (1988), 37 Op. Att'y Gen. No. 156 (1978).

HELD: When a police officer is injured in the line of duty, the employing city's obligation to supplement the officer's workers' compensation wage loss benefits by paying the difference between the benefits received and the officer's net salary pursuant to Mont. Code Ann. § 7-32-4132 ends after the city has paid benefits for a total of one year. That period may consist of aggregated periods of disability of less than one year resulting from the same injury and may extend beyond one calendar year from the date the disability begins.

July 8, 2003

Mr. Robert M. McCarthy  
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Dear Mr. McCarthy:

You have requested my opinion on the following question:

When a municipal police officer receives salary and workers' compensation benefits pursuant to Mont. Code Ann. § 7-32-4132, how is the one-year period calculated for termination of the city's obligation to pay the difference between the officer's net salary and the amount received from worker's compensation benefits?

Your question requires interpretation of Mont. Code Ann. § 7-32-4132, which provides in pertinent part:

(1) A member of a municipal law enforcement agency of a municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary . . . and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

Several prior opinions of this office have addressed this statute, see 42 Op. Att'y Gen. No. 114 (1988), 42 Op. Att'y Gen. No. 69 (1988), and 37 Op. Att'y Gen. No. 156 (1978), but none addresses the specific issue presented by your question.

As your letter observes, at least three different interpretations of the term "period not to exceed 1 year" are possible. The term could refer to a period of one calendar year from the date of the onset of the disability. It could refer to a cumulative amount of time totaling one year during which the officer remained disabled from employment, made up of several periods of disability of less than one year's duration broken up by periods during which the officer was able to return to work. Or, it could refer to a new period of one year commencing each time the officer leaves employment due to disability connected with the injury. Since so many plausible meanings of the term are available, the term is ambiguous, its meaning cannot be determined solely by resort to statutory language, and resort to rules of statutory construction is therefore appropriate. Skinner Enters. v. Lewis and Clark County Bd. of Health, 286 Mont. 256, 273-74, 950 P.2d 733, 744 (1997). In my opinion, consideration of the rules of statutory construction leads to

the conclusion that the second alternative is the one that is most consistent with the legislature's intent in adopting this provision.

The legislature adopted Mont. Code Ann. § 7-32-4132 for the purpose of assuring "that injured policemen should be fully compensated for up to one year after their [work-related] injuries." 42 Op. Att'y Gen. No. 69 at 273 (1988). The statute requires the employing city, "for a period not to exceed 1 year," to pay the officer the difference between the wage loss payments provided by workers' compensation, see 37 Op. Att'y Gen. No. 156 at 642 (1978), and the officer's "net salary, following adjustments for income taxes and pension contributions . . . ." In cases of disability arising from a work-related injury to a police officer in a city which contracts for retirement coverage under Mont. Code Ann. § 19-9-207, the statute, for a period of one year, fills a gap left by the workers' compensation laws that provide wage loss benefits equal to up to 66 2/3% of an employee's usual wages. Mont. Code Ann. § 39-71-701(3). See generally 42 Op. Att'y Gen. No. 69 (1988).

In cases in which the officer becomes disabled and the period of disability continues unbroken for a period of at least one year, the application of the statute is straightforward--the obligation of the city to supplement workers' compensation benefits expires one year after the date of the onset of the disability. Id. Where, however, the officer becomes disabled for a period of time less than one year, returns to work, and then becomes disabled again resulting in inability to work due to the same injury, situations may arise in which the officer's disability may extend beyond one year from the date of its original onset while not consuming an entire year of benefits under the statute.

In determining whether the benefits provided by the statute continue beyond the anniversary date of the onset of disability, I find no help in the legislative history materials related to the adoption of the statute. The committee minutes of the bill that became Mont. Code Ann. § 7-32-4132 and of the bills that later amended the statute shed no light on this particular question. Nor do the previous opinions of this office indicate an answer to your question. I am guided, however, by the obvious remedial objective of the statute, its relation with other laws in this area, and case law from another jurisdiction involving a similar question in holding that the most likely intention of the legislature was to provide benefits for a period of one year and to allow aggregating of periods of disability of less than one year's duration arising from the same injury in applying that limit.

First, I note that the legislature obviously intended the statute to confer a benefit on police officers injured in the line of duty over and above the benefits provided by workers' compensation by providing the officer the full level of salary earned prior to the injury

during the period of disability. It is therefore appropriate to construe the statute in a manner that effectuates this intention if possible. An interpretation that allows an employee to aggregate periods of disability totaling up to one year, even if the duration of the disability has been interrupted by a return to work, advances the purpose of the statute.

Second, while the particular statute in question does not contain an interpretation clause, I note that such a clause does exist with reference to the workers' compensation statutes to which Mont. Code Ann. § 7-32-4132 clearly relates. Mont. Code Ann. § 39-71-705(2) provides:

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Mont. Code Ann. § 7-32-4132 clearly embraces this idea by providing that the city's duty to supplement the workers' compensation benefit only applies when the employee is disabled from returning to work. A related statute, Mont. Code Ann. § 7-32-4136, addresses the city's obligation when the officer can be returned to work in a light or alternate duty capacity.

Statutes that are not inconsistent with each other and that relate to the same subject matter are in pari material, and such statutes should be read together if possible. City of Billings v. Smith, 158 Mont. 197, 212, 490 P.2d 221, 230 (1971). An interpretation disallowing aggregation of separate periods of disability totaling one year arising from the same injury runs contrary to the legislative intent to promote an early return to work by forcing the injured officer to choose to accept light duty or alternate employment, or even to return to full duty, within one year of the date of onset of the disability, only at the cost of forfeiting any further wage benefits under the statute, even in the event the officer's original disability returns. This Hobson's choice provides a disincentive to early return to work that is inconsistent with the public policy of the state as announced in Mont. Code Ann. § 39-71-705(2).

In Eason v. City of Riverside, 43 Cal Rptr. 408, 233 Cal. App. 2d 190 (1965), the California Court of Appeals construed a statute similar in pertinent respects to Mont. Code Ann. § 7-32-4132. The case concerned a police officer injured in the line of duty who suffered five distinct periods of disability resulting from the injury, the aggregate of which did not exceed one year, and culminated in a finding of permanent disability that

commenced more than a year and a half after the date of the original injury. The statute at issue provided, similarly to Mont. Code Ann. § 7-32-4132, that the officer was entitled to “leave of absence while so disabled without loss of salary, in lieu of temporary disability payment . . . for the period of such disability but not exceeding one year . . . .” Cal. Labor Code § 4850. The city contended that the officer’s entitlement to paid leave of absence ended one year after the onset of disability, while the officer contended that he was entitled to an aggregate of one year’s benefits under the statute, thus framing the identical issue presented by your request.

The California Court of Appeals held that the officer’s interpretation of the statute was correct. The court first noted that the Labor Code contained a provision requiring that the statutes be construed liberally “with the purpose of extending their benefits for the protection of persons injured in the course of their employment.” Cal. Labor Code § 3202. The court next concluded that “fair play and logic” compelled the conclusion that “an injured employee who works between intervals of disability should not be penalized by having such periods of employment charged against his right to compensation resulting from temporary disability.” Conversely, the court believed that in fairness employers should not be allowed credit against the statutory one-year benefit for periods when the employee was providing services to the employer and receiving compensation therefore. 233 Cal. App. 2d at 193. Finally, the court held that the public policy favoring return to work was best advanced by allowing the employee to aggregate periods of disability.

In our case, Montana has abandoned the practice of construing the workers’ compensation laws favorably to the employees, Mont. Code Ann. § 39-71-105(4) (2001), although such a practice was in effect by statute when the legislature enacted Mont. Code Ann. § 7-32-4132, see Mont. Rev. Code Ann. § 92-838 (1977). Additionally, however, as discussed above, the construction of the statute I adopt here is consistent with the public policy of the state with respect to the return of injured workers to the work force. And, the same practicality and fairness arguments that impressed the Eason court apply to the statute at issue here. On balance, the analysis in Eason is persuasive as to the construction of the statute at issue here.

THEREFORE, IT IS MY OPINION:

When a police officer is injured in the line of duty, the employing city’s obligation to supplement the officer’s workers’ compensation wage loss benefits by paying the difference between the benefits received and the officer’s net salary pursuant to Mont. Code Ann. § 7-32-4132 ends after the city has paid benefits for a total of one year, which may consist of aggregated periods of disability of less than one

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year resulting from the same injury and may extend beyond one year from the date the disability begins.

Very truly yours,

MIKE McGRATH

Attorney General

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